

Republican Policy Committee

U.S. HOUSE OF REPRESENTATIVES

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H.R. 7308 - FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

H.R. 7308 is another example of Congressional "overkill and overreaction" in the name of "reform" of the Nation's intelligence community. It packs up all of the problems involved in the sensitive and complex area of foreign intelligence surveillance and throws them to a specially established federal court.

If President Carter believes that Congressional initiatives have already tied the executive's hands in the conduct of foreign policy--the President should be doubly apprehensive of this bill which could well frustrate his ability to secure by electronic means foreign intelligence essential to the protection of our national security.

H.R. 7308 requires a "special court" to issue a judicial warrant to authorize the use of electronic surveillance (wiretapping, bugging, etc.) to gather foreign intelligence. This new court and newly devised warrant procedure establish new constitutional and legal concepts which are unprecedented in the American judicial system. It thrusts the judicial branch into the arena of foreign affairs and improperly subject "political" decisions to judicial intrusion".

The Republican Policy Committee strongly supports more appropriate and reasonable legislation such as H.R. 13442 as a substitute for H.R. 7308.

H.R. 13442 recognizes that the Constitution of the United States reposes in the executive branch the initial responsibility to protect our country from foreign aggression. It prescribes strict statutory procedures for the use of electronic surveillance in the United States. It requires that all surveillance authorizations be made in writing. It provides that all written records be maintained and subject to inspection by duly constituted House and Senate Intelligence Committees. It mandates specific authorizations for targeting U.S. persons to obtain foreign intelligence information. The bill establishes "minimization procedures" restricting the use of information relating to U.S. persons and requires its destruction unless necessary to aid foreign intelligence or law enforcement. It would

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H.R. 13442 strikes a realistic balance between our necessary foreign intelligence and national security needs and the individual liberties we are bound to defend. It retains in the Executive--where it should be--the authority to approve foreign intelligence electronic surveillance by requiring the consensus of the President and the two highest national security officials to approve such activities.

There is no existing case authority for vesting the federal courts with jurisdiction to authorize or refuse to authorize foreign intelligence gathering activities as proposed in H.R. 7308. The U.S. Supreme Court rejects such authority in Chicago & Southern Air Line Inc. v. Waterman Steamship Corp., 333 U.S. 103, 111 (1948) holding:

"...It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry."

Even the most recent espionage case United States v. Humphrey & Troung, Crim. No. 78-25-A, E. D. Va., May 19, 1978, stated:

"It is not at all certain that a judicial officer, even an extremely well-informed one, would be in a position to evaluate the threat posed by certain actions undertaken on behalf of or in collaboration with a foreign state... The Court is persuaded that an initial warrant requirement [for foreign intelligence electronic surveillance] would frustrate the President's ability to conduct foreign affairs in a manner that best protects the security of our government."

Because the United States needs accurate information to protect our country from the hostile acts of foreign powers, it must engage in electronic surveillance of foreign agents as well as the rare situation where a U.S. person works clandestinely for a foreign power. H.R. 13442 is the most effective way to prevent abuses and to fix record responsibility on those who would authorize foreign intelligence electronic surveillance. H.R. 13422 should be passed as a substitute to H.R. 7308.

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